

NASHVILLE, TENNESSEE

IN RE:

DOCKET NO. 02-00904

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and

necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.¹

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses;

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *See In Re: AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, FCC Memorandum Opinion and Order (May 27, 1999); FCC Memorandum Opinion and Order (January 8, 2001).

The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity*, Authority Docket No. 02-00230 (June 28, 2002).

and (2) April A. Ingram, Esq., information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the Hearing in this matter was issued by the Hearing Officer on December 9, 2002, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the Hearing.

TELECONEX'S HEARING

TeleConex's *Application* was uncontested. At the Hearing held on December 19, 2002, April A. Ingram, Esq., represented TeleConex, and Mr. Chris S. Watson, Vice President of Operations and Sales for TeleConex, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. Upon TeleConex's conclusion of proof in its case, the Hearing Officer granted TeleConex's *Application* based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. TeleConex is a corporation organized under the laws of Florida on May 14, 1997, and was qualified to transact business in Tennessee on July 24, 1993.

2. The complete street address of TeleConex's corporate service provider is 4100 Barrancas Avenue, Pensacola, Florida 32507. The telephone number is (850) 455-8898 and facsimile number is (850) 455-8411. TeleConex's counsel are Henry M. Walker, Esq., and April A. Ingram, Esq., of Boulton, Cummings, Connors & Berry, P.L.C., 414 Union Street, Suite 1600, P.O. Box 198062, Nashville, TN 37219-8062.

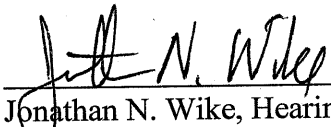
IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. TeleConex has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. TeleConex has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. The *Application* of TeleConex, Inc. is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.


Jonathan N. Wike, Hearing Officer